

A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See 86 Ill. Adm. Code 130.310. (This is a GIL).

September 29, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 21, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing to you for my friend: PERSON as PERSON is too busy to write you direct. This is an PROGRAM and I have been asked to join as I am using the products with some success but I will not join because BUSINESS is charging Illinois residents the wrong sales tax.

Please refer to the enclosed copy of one of PERSON's invoices from COMPANY and it shows 6¼ %. This should be 1%.

PERSON and I were in another nutritional supplement company based in STATE and they charged us correctly: 1% on ingestable product and 6¼% on sales aids.

I have tried to go through the people above PERSON to get this straightened out but since they do not live in Illinois they are doing nothing.

WOULD YOU PLEASE CONTACT COMPANY AND GET THIS MATTER CLARIFIED WITH THEM? I DON'T FEEL THAT THIS IS AN INTENTIONAL ERROR; JUST AN OVERSIGHT. BUT THERE ARE MANY STATES WHERE INGESTABLE ITEMS ARE TAXED DIFFERENTLY FROM OTHER ITEMS. FOR EXAMPLE THERE IS NO SALES TAX ON FOOD IN WI BUT I DON'T KNOW THEIR (WI'S) policy on NUTRITIONAL ITEMS , ASPIRIN, ETC.

THANK YOU FOR YOUR EXPEDIENT ATTENTION TO THIS MATTER.

We are unable to write the taxpayer you refer to in your letter. You may forward this letter to them. We will refer your complaint to the appropriate division within the Department for investigation. All overcollections of tax must either be turned over to the Department or refunded to the customer.

In the context of a General Information Letter, we are unable to rule on the taxability of the various products you described in your letter. We do not have enough information regarding the products listed on the invoice to determine

whether they qualify as a medicine or as a food subject to the low rate of tax. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sale of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1). A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See 86 Ill. Adm. Code 130.310(c)(1).

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel